

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRETA STROMAN and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

*Docket No. 97-2716; Submitted on the Record;
Issued September 28, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a recurrence of partial disability on or after September 22, 1995; and (2) whether appellant has established a recurrence of disability on or after April 3, 1996 causally related to her March 7, 1995 employment injury.

On March 7, 1995 appellant, then a 31-year-old mail handler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she sustained an injury to her right shoulder in the performance of duty. Appellant stopped work on March 8, 1995 and returned to full-duty work on April 24, 1995. The Office of Workers' Compensation Programs accepted the claim for contusion to the right shoulder.

On May 17, 1995 appellant filed a notice of recurrence of disability which the Office accepted on August 17, 1995. Appellant returned to limited-duty work on May 22, 1995 working eight hours per day.

Appellant submitted a duty status report (Form CA-17) dated September 14, 1995 by Dr. Robert A. Adair which diagnosed cervical derangement and cervical radiculopathy and reduced appellant's work hours from eight hours per day to five hours per day with restrictions.

Appellant filed a notice of recurrence of disability on September 22, 1995 alleging she sustained a recurrence of disability causally related to her March 7, 1995 employment injury. Appellant noted that her doctor had reduced her work hours from eight hours per day to five hours per day effective September 14, 1995.

In support of her claim, she submitted a disability certificate and report from Dr. Adair. In a disability certificate dated September 21, 1995, Dr. Adair stated that appellant was only able to work five hours per day with no lifting, no pushing and no pulling due to her March 7, 1995 employment injury. In a report dated October 19, 1995, he diagnosed right shoulder internal

derangement, cervical derangement and right clavicle sprain. Dr. Adair noted appellant as stating “that when she work more than [five] hours, she experienced severe neck and back pain.”

By decision dated November 8, 1995, the Office denied appellant’s claim for failure to establish a causal relationship between her accepted employment injury and alleged recurrence of disability.

In a report dated December 4, 1995, Dr. John R. Nailor, an orthopedic surgeon, noted that appellant had initially injured her right shoulder when a shelf fell on her collar bone on March 7, 1995 and stated that she was initially seen on September 13, 1995 when “restricted motion of the cervical spine was noted.” Dr. Nailor opined, based upon a physical examination and employment injury history, diagnosed traumatic cervical myofascitis with radiculopathy and paresthesias.

In a report dated December 5, 1995, Dr. Adair noted:

“Because of continued cervical and shoulder symptomatology, the patient was referred to Dr. Nailor who examined the patient for the first time on September 13, 1995. His examination revealed restricted motion of the cervical spine with tenderness to the right trapezius muscle and cervical musculature. X-rays of the cervical spine revealed considerable straightening of the cervical spine, those being films that were taken in our Office on September 14, 1995. Dr. Nailor’s diagnosis was traumatic cervical myofascitis with radiculopathy and paraesthesia.

It is my medical opinion that [appellant’s] injuries relative to her neck were caused by the accident of March 7, 1995 and were a part of the original diagnosis stated on the second examination.”

In a work-capacity evaluation (From OWCP-5c) dated January 17, 1996, Dr. Adair stated that appellant could work five hours per day provided she limited pushing, pulling, lifting, carrying and bending. He indicated that appellant could not perform repetitive work with her right wrist. Dr. Adair diagnosed HNP C5-6/cervical derangement and left wrist symptoms because of increased use of her left upper extremity.

Appellant requested reconsideration in letters dated January 8 and January 11, 1996.

In a letter dated January 26, 1996, Dr. Adair noted that a December 12, 1995 magnetic resonance imaging (MRI) scan “was positive for a posterior herniated nucleus pulposus at the C5-6 level and for straightening of the cervical curvature.” He indicated that the MRI provided “objective evidence of my previous diagnosis of a cervical derangement and cervical radiculopathy with traumatic cervical myofascitis and paraesthesias.” Dr. Adair noted that this diagnosis was corroborated by Dr. Nailor. He opined that appellant’s March 7, 1995 employment injury was the cause of the herniated disc and that appellant suffers from “permanent partial symptoms as a result of this permanent injury.”

By decision dated April 1, 1996, the Office denied appellant's request for modification of the November 8, 1995 on the basis that she had not submitted any new evidence beyond a December 5, 1995 report from Dr. Adair and form reports.

Appellant filed a notice of recurrence of disability on April 3, 1996 alleging she sustained a recurrence of disability causally related to her March 7, 1995 employment injury.¹

Appellant requested reconsideration of the denial of her September 22, 1995 recurrence claim through a representative in a letter dated May 3, 1996 and in a letter dated May 8, 1996. In support of her recurrence claim, appellant submitted an April 23, 1996 report from Dr. Adair. In the April 23, 1996 report, Dr. Adair diagnosed a herniated nucleus pulposus at C5-6, cervical radiculopathy and cervical myofascitis and paraesthesias based upon his examinations and objective evidence. Dr. Adair indicated that due to her current restricted job duties which require repetitive action and use of her left hand, that appellant had "aggravated her preexisting neck, left shoulder and left wrist ganglion symptoms." He further indicated that appellant had "also experienced recurrence of her original neck and left upper extremity pain and is now complaining of left shoulder pain along with left wrist symptoms exacerbated by repetitive work activity to which she is now assigned."

In a May 21, 1996 decision, the Office denied appellant's request for reconsideration of the denial of her September 22, 1995 recurrence claim. The Office noted that no injury to appellant's neck area was identified at the time of her March 7, 1995 employment injury and the claim had been accepted for an injury to the right shoulder. The Office determined that Dr. Adair's April 17, 1996 report failed to support a recurrence of disability on September 22, 1995.

In a letter dated April 16, 1997, appellant requested reconsideration of the denial of her September 22, 1995 recurrence claim and submitted a report dated April 17, 1997 from Dr. Adair and a May 7, 1996 report from Dr. Noel Fleischer, a Board-certified neurologist.²

In a report dated April 17, 1997, Dr. Adair stated that appellant had complained of neck and shoulder pain since the date of her initial visit due to her accepted employment injury. He opined that appellant "developed increased and exacerbated symptomatology, specifically more severe neck pain and cervical radicular pain, all the result of an exacerbation of a preexisting herniated nucleus." Dr. Adair stated that appellant was totally disabled from March 20 through April 30, 1996 due to stress and a new injury to her left wrist due to her light-duty work. In conclusion, he opined that appellant:

"Remains totally partially permanently disabled as a result of the initial HNP at C5-6 suffered as a result of a work accident along with a cervical radiculopathy, cervical myofascitis and paraesthesias, all as a result of the initial March 7, 1995

¹ In this letter appellant also alleged that she sustained a new injury, but does not specify what the injury was.

² The Board notes that appellant requested to change her treating physician from Dr. Adair to Dr. Michael Hearn. The Office, in a letter dated August 26, 1996, advised appellant that it could not authorize a change in physicians at that time, but did authorize appellant to have a one time visit with Dr. Hearn.

work-related accident. The patient continues to suffer with a more recent right shoulder internal derangement brought on and exacerbated by her light duty and the work activity which this causes.”

In a May 7, 1996 report, Dr. Fleischer diagnosed internal derangement of the right shoulder and traumatic cervical radiculopathy. He noted that appellant had injured her left wrist in a prior work accident. In his employment injury history, Dr. Fleischer opined that appellant’s “present illness is related to” her March 7, 1995 employment injury when a shelf fell on her right shoulder and appellant had “suffered injuries to her neck and right shoulder.”

In a merit decision dated May 22, 1997, the Office denied appellant’s request for reconsideration of the May 21, 1996 decision denying her claim for a recurrence of disability on September 22, 1995.

In a July 3, 1997 letter, the Office advised appellant of the evidence required to support a claim for a recurrence of disability.

In letter dated July 11, 1997, appellant submitted two reports from Dr. Adair dated April 17, 1997 and April 23, 1996 and a report dated June 7, 1996 from C. Edward Robins, Ph.D.

In a June 7, 1996 report, Dr. Robins noted that appellant had been injured at work when a shelf fell on her causing a herniated disc. He diagnosed depression and underlying rage about the employment accident.

In a decision dated August 18, 1997, the Office found that the evidence failed to establish that the claimed condition or disability was causally related to her March 7, 1995 employment injury. In the attached memorandum, the Office noted that it had reviewed the April 23, 1996 and April 17, 1997 reports by Dr. Adair and the report from Dr. Robins which it determined had failed to provide a medical opinion concerning the causal relationship between appellant’s current medical condition and her employment injury.

The Board finds that appellant has not established that she sustained a recurrence of partial disability commencing September 22, 1995 or that she sustained recurrence of total disability commencing April 3, 1996 causally related to her March 7, 1995 employment injury.

When an employee who is disabled from the job she held when injured because of employment-related residuals returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty job, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability that prevents him or her from performing such light duty.³

As part of this burden, the employee must show a material change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job

³ *Richard E. Konnen*, 47 ECAB 388 (1996).

requirements.⁴ Thus, the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,⁵ and supports that conclusion with sound medical reasoning.⁶

In the present case, following appellant's March 7, 1995 injury, she returned to full-duty work on April 24, 1995. She sustained a recurrence of disability on May 17, 1995 which the Office accepted. Appellant returned to work in a light-duty position on May 22, 1995, Dr. Adair reduced her work hours from eight to five hours on September 14, 1995, and then appellant claimed a recurrence of disability on or after September 22, 1995, due to her March 7, 1995 employment injury. She continued working five hours in her light-duty position and then claimed a recurrence of total disability on or after April 3, 1996. Appellant has not submitted sufficient medical evidence to establish that she sustained a partial disability on or after September 22, 1995 or total disability on or after April 3, 1996 due to her March 7, 1995 employment injury.

The only report in the record which provides an opinion that appellant's current condition is due to her accepted employment-related injury is Dr. Adair's December 5, 1995 report which attributed appellant neck injuries to her March 7, 1995 employment injury. However, this report is not sufficient to meet appellant's burden of proof in establishing a change in nature and extent of her injury-related condition as Dr. Adair failed to provide the necessary medical rationale explaining how and why appellant's accepted condition of contusion to the right shoulder developed into cervical myofascitis with radiculopathy and paraesthesia. Dr. Nailor's report is insufficient because it provides no rationale explaining how his diagnosis of cervical myofascitis with radiculopathy and paresthesias were due to her accepted condition of contusion to the right shoulder.

Furthermore, appellant has not established that she sustained a recurrence of total disability commencing April 3, 1996. She submitted reports from Drs. Adair, Fleischer and Robins in support of her claim for a recurrence of disability after April 3, 1996. Dr. Robins diagnosed a herniated disc due to a shelf falling on her shoulder. Dr. Robins' report is insufficient to meet appellant's burden as he notes that appellant was injured at work, but does not provide any medical rationale explaining how and why appellant's accepted condition of contusion to the right shoulder developed into a herniated disc. As noted previously, Dr. Adair's opinion is insufficient as he fails to provide any medical rationale explaining how and why appellant's accepted condition of contusion to the right shoulder developed into cervical myofascitis with radiculopathy and paraesthesia or an exacerbation of a preexisting herniated nucleus. Dr. Fleisher's report also contains the same deficiencies as those contained in the reports of Drs. Adair and Robins. Dr. Fleisher diagnoses internal derangement of the right shoulder and traumatic cervical radiculopathy, but fails to explain how appellant's accepted condition developed into his diagnoses. In addition, none of the physicians address whether

⁴ *Mary A. Howard*, 45 ECAB 646, 651 (1994), quoting *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁶ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

there was a change in the nature and extent of appellant's light-duty requirements such that she would be unable to perform the light-duty position.

As noted above, it is appellant's burden to establish a claim for recurrence of disability. Appellant has not established a recurrence of partial disability commencing September 22, 1995 or total disability commencing April 3, 1996 that is causally related to her March 7, 1995 employment injury. Accordingly, the Office properly denied both her claims for a recurrence of disability.

The decisions of the Office of Workers' Compensation Programs dated August 18 and May 22, 1997 are hereby affirmed.

Dated, Washington, D.C.
September 28, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member